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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-862]

Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India:  
Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in  
Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of  
Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable  
subsidies are being provided to producers and exporters of certain polyethylene terephthalate  
(PET) resin from India as provided in section 705 of the Tariff Act of 1930, as amended (the  
Act). For information on the estimated subsidy rates, see the “Final Determination” section of  
this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or John Corrigan, AD/CVD  
Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S.  
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telephone (202) 482-3813 or (202) 482-7438, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on August 14, 2015,<sup>1</sup> and  
placed the Post-Preliminary Memorandum on the record of this investigation on November 13,

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<sup>1</sup> See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Preliminary  
Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment*

2015.<sup>2</sup> A summary of the events that occurred since the post-preliminary determination, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.<sup>3</sup> The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://trade.gov/enforcement>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now March 4, 2016.<sup>4</sup>

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*of Final Determination With Final Antidumping Duty Determination*, 80 FR 48819 (August 14, 2015) (*Preliminary Determination*).

<sup>2</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "RE: Countervailing Duty (CVD) Investigation on Certain Polyethylene Terephthalate Resin from India – New Subsidy Allegations," dated November 13, 2015 (Post-Preliminary Memorandum).

<sup>3</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India," dated concurrently with this notice (Issues and Decision Memorandum).

<sup>4</sup> See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

### Scope of the Investigation

The merchandise covered by this investigation is PET resin. The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. For a complete description of the scope of this investigation, *see* Appendix II.

The Department did not receive comments regarding the scope of this investigation.

### Methodology

The Department is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>5</sup> For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.<sup>6</sup>

### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

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<sup>5</sup> *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>6</sup> *See* Issues and Decision Memorandum.

### Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because JBF Industries Limited and the Government of India did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>7</sup> For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memorandum.

### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination* and post-preliminary determination. For a discussion of these changes, *see* the Issues and Decision Memorandum.

### Final Affirmative Determination of Critical Circumstances, in Part

On July 16, 2015, Petitioners filed a timely critical circumstances allegation, pursuant to section 773(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of PET resin from India.<sup>8</sup> We preliminarily determined that critical circumstances did not exist for Dhunseri Petrochem Ltd., but did exist for JBF Industries Limited and the all-others companies. That determination remains unchanged and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memorandum at the section, "Final Determination of Critical Circumstances, In Part."

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<sup>7</sup> *See* sections 776(a) and (b) of the Act.

<sup>8</sup> *See* Letter from Petitioners dated July 16, 2015.

### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Dhunseri, the only individually investigated exporter/producer of the subject merchandise that participated in this investigation. In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents with those companies’ export sales of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. In this investigation, the only rate that is not zero or *de minimis*, or based entirely on facts available, is the rate calculated for Dhunseri. Consequently, the rate calculated for Dhunseri is also assigned as the “all-others” rate.

Exporter/Producer	Subsidy Rate (Percent)
Dhunseri Petrochem Ltd (formerly Dhunseri Petrochem and Tea Ltd) (collectively, Dhunseri)	5.12
JBF Industries Limited	153.80
All-Others	5.12

### Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after May 16, 2015 (for those entities for which we found critical circumstances exist) or on or after August 14, 2015, the date of publication of the *Preliminary Determination* in the *Federal Register* (for all entities for which we did not find critical

circumstances exist). In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after December 12, 2015, but to continue the suspension of liquidation of all entries from May 16, 2015, or August 14, 2015, as the case may be, through December 11, 2015.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

#### Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3).

Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

Dated: March 4, 2016.

## Appendix I

### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
  - A. Case History
  - B. Period of Investigation
- III. Final Determination of Critical Circumstances, in Part
- IV. Scope of the Investigation
- V. List of Issues
- VI. Subsidies Valuation
  - A. Allocation Period
  - B. Attribution of Subsidies
  - C. Denominators
  - D. Benchmarks and Discount Rates
    - Short-Term and Long-Term Rupee Denominated Loans
    - Discount Rates
- VII. Use of Facts Otherwise Available and Adverse Inferences
  - JBF Industries Limited (JBF)
  - Government of India (GOI)
  - Selection of the Adverse Facts Available Rate
  - Corroboration of Secondary Information
- VIII. Analysis of Programs
  - A. Programs Preliminarily Determined to Be Countervailable
    - 1. Export Promotion of Capital Goods Scheme (EPCG)
    - 2. Duty Drawback (DDB)
    - 3. Focus Product Scheme (FPS)
    - 4. Incentive Under The West Bengal State Support for Industries Scheme
  - B. Programs Preliminary Determined Not To Be Used or Not To Confer a Benefit During the POI by Dhunseri
    - 1. Pre- and Post-Shipment Export Financing
    - 2. Duty Free Import Authorization Scheme
    - 3. State Government of Gujarat's Provision of Land for Less than Adequate Remuneration
    - 4. Financial Assistance to Industrial Parks
    - 5. Income Tax Exemption Scheme (ITES)

#### *Government of India Programs*

- a. Status Holder Incentive Scrip
- b. Advance Licenses Program
- c. Focus Market Scheme
- d. Special Economic Zones (SEZ) (6 programs)
- e. Export Oriented Units (EOUs Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies

- f. GOI Loan Guarantees
- g. Market Development Assistance Program

*State Government Programs*

- a. State and Union Territory Sales Tax Incentive Programs
  - b. Maharashtra Market Development Assistance Program
  - c. Maharashtra Industrial Promotion Subsidy
  - d. Maharashtra Electricity Duty Exemption
  - e. Maharashtra Waiver of Stamp Duty
  - f. State Government of Maharashtra- Incentives to Strengthening Micro-, Small-, and Medium- Sized and Large Scale Industries
  - g. State Government of Gujarat- Industrial Policy 2009 Scheme
- C. Final AFA Rates for Programs Determined Used by JBF

IX. Calculation of the All-Others Rate

X. Analysis of Comments

XI. Recommendation

## **Appendix II**

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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